

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY
7 SITING ACT; CLARIFYING THE DEFINITION OF "FACILITY"; PROVIDING DEFINITIONS FOR THE TERMS
8 "OPERATOR" AND "RECLAMATION"; GENERALLY CLARIFYING THE ROLES AND AUTHORITIES OF THE
9 DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW;
10 REVISING THE PROCEDURE FOR AMENDING AND RENEWING CERTIFICATES; CLARIFYING THE
11 DEPARTMENT'S DECISION CRITERIA FOR GENERATION FACILITIES; CLARIFYING THE DEPARTMENT'S
12 AUTHORITY TO MODIFY THE LOCATION OF A FACILITY; REQUIRING AN OPERATOR TO PROVIDE A
13 SURETY BOND; AMENDING SECTIONS 75-20-104, 75-20-216, 75-20-219, 75-20-223, 75-20-225,
14 75-20-226, 75-20-301, 75-20-302, 75-20-401, 75-20-406, AND 75-20-408, MCA; AND PROVIDING
15 AN IMMEDIATE EFFECTIVE DATE."

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

19 **Section 1.** Section 75-20-104, MCA, is amended to read:

20 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following
21 definitions apply:

22 (1) "Addition thereto" means the installation of new machinery and equipment that would
23 significantly change the conditions under which the facility is operated.

24 (2) "Application" means an application for a certificate submitted in accordance with this chapter
25 and the rules adopted under this chapter.

26 (3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,
27 diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or
28 equipment associated with the production or delivery of the energy form or product produced by a facility,
29 except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less
30 in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d), including upgrading to a design capacity covered by subsection (8)(c), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or

1 any addition thereto;

2 (b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts
3 that would be defined in subsection (8)(a):

4 (i) emitting 300 tons a year of particulate matter at 10 microns or less;

5 (ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not
6 employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title
7 75, chapter 2;

8 (iii) directly affecting:

9 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

10 (B) a class I river or stream ~~as designated pursuant to 33 U.S.C. 1251, et seq.;~~

11 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
12 to 16 U.S.C. 1531, et seq.; or

13 (D) one of the following exclusion areas:

14 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;

15 (II) national primitive areas;

16 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;

17 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
18 et seq.; or

19 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or

20 (iv) that would require a permanent workforce greater than 300 workers;

21 (c) each electric transmission line and associated facilities of a design capacity of more than 69
22 kilovolts, except that the term:

23 (i) does not include an electric transmission line and associated facilities of a design capacity of
24 230 kilovolts or less and 10 miles or less in length; and

25 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
26 but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way
27 agreements or options for a right-of-way from more than 75% of the owners who collectively own more
28 than 75% of the property along the centerline;

29 (d) except pipelines within the boundaries of the state that are used exclusively for the irrigation
30 of agricultural crops, each pipeline, whether partially or wholly within the state, greater than 17 inches in

1 inside diameter and 30 miles in length, and associated facilities;

2 (e) any use of geothermal resources, including the use of underground space in existence or to
3 be created, for the creation, use, or conversion of energy, designed for or capable of producing
4 geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except
5 pollution control facilities approved by the department and added to an existing plant;

6 (f) any underground in situ gasification of coal; or

7 (g) an energy-related project for which the department has granted a petition pursuant to
8 75-20-201(5).

9 (9) "Operator" means any person to whom a certificate has been issued.

10 ~~(9)~~(10) "Person" means any individual, group, firm, partnership, corporation, limited liability
11 company, cooperative, association, government subdivision, government agency, local government, or
12 other organization or entity.

13 (11) "Reclamation" means restoring all land disturbed by a facility to a condition of comparable
14 usefulness and stability as that of adjacent areas, including removal of structures and equipment,
15 revegetation, cleanup of any spills of substances harmful to the environment, and any treatment of water
16 necessary to comply with laws protecting water quality.

17 ~~(10)~~(12) "Transmission substation" means any structure, device, or equipment assemblage,
18 commonly located and designed for voltage regulation, circuit protection, or switching necessary for the
19 construction or operation of a proposed transmission line.

20 ~~(11)~~(13) "Utility" means any person engaged in any aspect of the production, storage, sale,
21 delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate
22 public use."

23

24 **Section 2.** Section 75-20-216, MCA, is amended to read:

25 **"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.**

26 (1) After receipt of an application, the department shall within 60 days notify the applicant in writing that:

27 (a) the application is in compliance and is accepted as complete; or

28 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
29 deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant
30 in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) Except as provided for in 75-20-231, the department shall issue within 1 year following the date of acceptance of an application any decision, opinion, order, certification, or permit required under the laws, other than those contained in this ~~part~~ chapter, administered by the department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~department board~~, the department shall provide an opportunity for public review and comment.

(4) Except as provided in 75-20-231, within 1 year following acceptance of an application for a facility, the department shall issue a report that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall issue its report within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.

(6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

1 **Section 3.** Section 75-20-219, MCA, is amended to read:

2 **"75-20-219. Amendments to certificate.** (1) Within 30 days after notice of an amendment to a
3 certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original
4 proceeding, the department shall notify the applicant in writing that:

5 (a) the application is complete; or

6 (b) the application is not in compliance and shall list the deficiencies. Upon correction of these
7 deficiencies and resubmission by the applicant, the department shall within 15 days notify the applicant
8 in writing that the application is in compliance and is accepted as complete.

9 (2) Within 30 days after the application is accepted as complete, the department shall determine
10 whether the proposed change in the facility would result in a material increase in any environmental impact
11 of the facility or a substantial change in the location of all or a portion of the facility as set forth in the
12 certificate. If the department determines that the proposed change would result in a material increase in
13 any environmental impact of the facility or a substantial change in the location of all or a portion of the
14 facility, ~~the board shall hold a hearing in the same manner as a hearing is held on an application for a~~
15 ~~certificate. After hearing, the board~~ the department shall grant, deny, or modify the amendment with
16 conditions ~~as that~~ it considers appropriate within 60 days after the application is accepted as complete.

17 ~~(2)(3)~~ (3) In those cases in which the department determines that the proposed change in the facility
18 would not result in a material increase in any environmental impact or would not be a substantial change
19 in the location of all or a portion of the facility, the ~~board~~ department shall automatically grant the
20 amendment either as applied for or upon terms or conditions that the ~~board~~ department considers
21 appropriate ~~unless the department's determination is appealed to the board within 15 days after notice of~~
22 ~~the department's determination is given.~~

23 ~~—— (3) If the department or the board, under subsection (4), determines that a hearing is required~~
24 ~~because the proposed change would result in a material increase in any environmental impact of the facility~~
25 ~~or a substantial change in the location of all or a portion of the facility, the applicant has the burden of~~
26 ~~showing by clear and convincing evidence that the amendment should be granted.~~

27 ~~—— (4) If the department determines that the proposed change in the facility would not result in a~~
28 ~~material increase in any environmental impact or would not be a substantial change in the location of all~~
29 ~~or a portion of the facility and a hearing is required because the department's determination is appealed~~
30 ~~to the board as provided in subsection (2), the appellant has the burden of showing by clear and~~

convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(4) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden of showing by clear and convincing evidence that the department's determination is not reasonable.

(5) If an amendment is required to a certificate that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department or board, the amendment must be processed under the applicable statutes administered by the department or board."

Section 4. Section 75-20-223, MCA, is amended to read:

"75-20-223. Board review of department decisions. (1) A person aggrieved by the final decision of the department on an application for a certificate, ~~the renewal of a certificate,~~ or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

(2) A person aggrieved by the final decision of the department on an application for amendment or renewal of a certificate may within 15 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6."

Section 5. Section 75-20-225, MCA, is amended to read:

"75-20-225. Certificate renewal -- application -- contents -- filing fee. (1) A certificate holder for a facility, as defined in 75-20-104(8)(a)(i) or (8)(b), may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department an application in the form that the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and other information that the board requires by rule for certification. ~~The matters listed in 75-20-211(1)(a)(iii) and (1)(a)(iv) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.~~

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3)

1 through (5).

2 (5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in
3 accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the
4 original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

5 (a) 0.125% of any estimated cost up to \$300 million; plus

6 (b) 0.063% of any estimated cost over \$300 million."

7

8 **Section 6.** Section 75-20-226, MCA, is amended to read:

9 **"75-20-226. Renewal study -- renewal hearing -- decision.** (1) Upon receipt of a completed
10 application for renewal of a certificate, the department shall evaluate the updated information and any
11 significant changes in alternatives, technology, baseline environment, and the environmental impacts of
12 a facility that have taken place since the original study performed in granting the certificate, considering
13 the applicable criteria listed in 75-20-301 and the original department findings and certificate conditions.

14 (2) The department, within 10 months of acceptance of a complete renewal application, shall
15 complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion,
16 order, certification, or permit must be used as part of its decisionmaking process under subsections (3),
17 (5), and (6) of this section.

18 (3) Within 12 months following acceptance of a complete application for renewal of a certificate,
19 the department shall issue a report. This report must contain the department's studies, evaluations,
20 recommendations, and other pertinent documents resulting from its study and evaluation and an updated
21 environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The
22 department's report must be directed to the question of whether the original department findings and
23 conditions have been or need to be altered as a result of any significant changes in alternatives,
24 technology, baseline environment, or environmental impact since issuance of the certificate, considering
25 the applicable criteria listed in 75-20-301.

26 (4) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and
27 conservation; revenue; and public service regulation shall report to the department information relating to
28 the impact of the proposed site on each department's area of responsibility. The report may include
29 opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained
30 from filing fees to the departments making reports to reimburse them for the cost of compiling information

1 and issuing the required reports.

2 (5) Within 45 days after completion of the report pursuant to 75-20-226, the department shall
3 make complete findings, issue an opinion, and render a decision upon the record, either granting or denying
4 the renewal application or renewing the certificate with ~~such~~ changes in the terms and conditions ~~as that~~
5 the ~~board~~ department considers appropriate.

6 (6) The department may not renew a certificate either as proposed by the applicant or as modified
7 by the department unless it finds and determines that the criteria in 75-20-301, considering any significant
8 changes in need, alternatives, technology, baseline environment, and environmental impact, have been
9 met."

10

11 **Section 7.** Section 75-20-301, MCA, is amended to read:

12 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within 45 days
13 after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(c) and (8)(d), the
14 department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the
15 department finds and determines:

16 (a) the basis of the need for the facility;

17 (b) the nature of the probable environmental impact;

18 (c) that the facility minimizes adverse environmental impact, considering the state of available
19 technology and the nature and economics of the various alternatives;

20 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:

21 (i) what part, if any, of the line or aqueduct will be located underground;

22 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the
23 utility systems serving the state and interconnected utility systems; and

24 (iii) that the facility will serve the interests of utility system economy and reliability;

25 (e) that the location of the facility as proposed conforms to applicable state and local laws and
26 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as
27 applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing
28 technology, of factors of cost or economics, or of the needs of consumers, whether located inside or
29 outside the directly affected government subdivisions;

30 (f) that the facility will serve the public interest, convenience, and necessity;

(g) that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(h) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands.

(2) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(f), the department shall consider:

(a) the items listed in subsections (1)(a) and (1)(b);

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(3) Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; ~~or~~ and

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; ~~or~~

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

(4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the alternative must:

(a) meet the objective of the applicant's proposal;

(b) be available to the applicant; and

(c) be reasonable and specific to the applicant's proposed site.

(5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).

(6) For facilities defined in ~~77-20-104(8)~~ 75-20-104(8), if the department cannot make the findings required in 75-20-301, it shall deny the certificate."

1

2 **Section 8.** Section 75-20-302, MCA, is amended to read:

3 **"75-20-302. Conditions imposed.** ~~(1) If~~ Except as provided in subsection (2), if the department
4 determines that the location of all or a part of the proposed facility should be modified, it may condition
5 its certificate upon the modification, ~~provided that~~ if the persons residing in the area affected by the
6 modification have been given reasonable notice of the modification.

7 ~~(2) The department may require the applicant to post performance bonds to guarantee successful~~
8 ~~reclamation and revegetation of the project area. For facilities defined in 75-20-104(8)(a) and (8)(b), the~~
9 department may modify the location of associated facilities only."

10

11 **Section 9.** Section 75-20-401, MCA, is amended to read:

12 **"75-20-401. Additional requirements by other governmental agencies not permitted after issuance**
13 **of certificate -- exceptions.** (1) Notwithstanding any other law, ~~no~~ a state or regional agency or
14 municipality or other local government may not require any approval, consent, permit, certificate, or other
15 condition for the construction, operation, or maintenance of a facility authorized by a certificate issued
16 pursuant to this chapter, except that the department ~~and board retain~~ retains the authority that ~~they have~~
17 it has or may be granted to determine compliance of the proposed facility with state and federal standards
18 and implementation plans for air and water quality and to enforce those standards.

19 (2) This chapter does not prevent the application of state laws for the protection of employees
20 engaged in the construction, operation, or maintenance of a facility."

21

22 **Section 10.** Section 75-20-406, MCA, is amended to read:

23 **"75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of
24 the board on an application for a certificate may obtain judicial review of that decision by the filing of a
25 petition in a state district court of competent jurisdiction.

26 (2) The judicial review procedure is the procedure for contested cases under the Montana
27 Administrative Procedure Act.

28 ~~(3) When the applicant is granted a permit or certification, with or without conditions, pursuant~~
29 ~~to the laws administered by the department and the board and this chapter, the decision may be appealed~~
30 ~~only in conjunction with the final decision of the board as provided in 75-20-232 and subsections (1) and~~

1 ~~(2) of this section. If an air or water quality permit or certification is denied by the department or the~~
2 ~~board, the applicant may:~~
3 ~~—— (a) appeal the denial under the appellate review procedures provided in the air and water quality~~
4 ~~laws administered by the department and the board; or~~
5 ~~—— (b) reserve the right to appeal the denial by the department or the board until after the board has~~
6 ~~issued a final decision as provided in 75-20-232.~~
7 ~~—— (4) This section may not be construed to prohibit the board from holding a hearing as provided~~
8 ~~in this section on all matters that are not the subject of a pending appeal by the applicant under subsection~~
9 ~~(3)(a)."~~

10

11 **Section 11.** Section 75-20-408, MCA, is amended to read:

12 **"75-20-408. Penalties for violation of chapter -- civil action by attorney general.** (1) (a) ~~Whoever~~
13 A person that commences to construct or operate a facility without first obtaining a certificate required
14 under 75-20-201 or a waiver ~~thereof~~ of a certificate under 75-20-304(2) or having first obtained a
15 certificate; constructs, operates, or maintains a facility other than in compliance with the certificate or that
16 violates any other provision of this chapter or any rule or order adopted ~~thereunder~~ under this chapter or
17 knowingly submits false information in any report, ~~10-year plan~~, or application required by this chapter or
18 rule or order adopted ~~thereunder~~ under this chapter or causes any of ~~the aforementioned~~ those acts to
19 occur is liable for a civil penalty of not more than \$10,000 for each violation.

20 (b) Each day of a continuing violation constitutes a separate offense.

21 (c) The penalty is recoverable in a civil suit brought by the attorney general on behalf of the state
22 in the district court of the first judicial district of Montana.

23 (2) ~~Whoever~~ A person that knowingly and willfully violates subsection (1) shall be fined an amount
24 of not more than \$10,000 for each violation or imprisoned for a term of not more than 1 year, or both.
25 Each day of a continuing violation constitutes a separate offense.

26 (3) In addition to any penalty provided in subsection (1) or (2), whenever the department
27 determines that a person is violating or is about to violate any of the provisions of this section, it may refer
28 the matter to the attorney general who may bring a civil action on behalf of the state in the district court
29 of the first judicial district of Montana for injunctive or other appropriate relief against the violation and to
30 enforce this chapter or a certificate issued ~~hereunder~~ under this chapter. Upon a proper showing, a

1 permanent or preliminary injunction or temporary restraining order ~~shall~~ must be granted without bond.

2 (4) The department shall also enforce this chapter and bring legal actions to accomplish the
3 enforcement through its own legal counsel.

4 (5) All fines and penalties collected ~~shall~~ must be deposited in the state special revenue fund for
5 the use of the department in administering this chapter."

6
7 NEW SECTION. Section 12. Performance bonding. (1) An operator shall provide a surety bond
8 payable to the state of Montana, conditioned upon the faithful performance of the requirements of this
9 chapter, rules implementing this chapter, and the certificate. The bond or other financial assurance must
10 be in a form and amount and from a source acceptable to the department.

11 (2) In lieu of a surety bond, financial assurance may be provided by a cash deposit with the
12 department, an assignment of a certificate of deposit, an irrevocable letter of credit, or some other form
13 of financial assurance acceptable to the department.

14 (3) The amount of bond may not be less than 110% of the estimated cost to the state to ensure
15 compliance with this chapter, the rules, and the certificate, including but not limited to the cost of
16 reclamation of the facility and the potential cost of management, operation, and maintenance of the facility
17 by the department upon temporary or permanent insolvency of the operator or abandonment of the facility
18 until the bond can be fully liquidated.

19 (4) A governmental agency is not required to provide financial assurance under this chapter.

20 (5) For certificates and amendments to certificates issued prior to [the effective date of this act],
21 the department shall complete a comprehensive bond calculation for those facilities within 2 years after
22 that date. The amount of bond must be determined and is subject to an administrative hearing and judicial
23 review, as provided in subsection (6).

24 (6) (a) Each year, the department shall review the adequacy of financial assurance for each bonded
25 facility and determine if a comprehensive bond review is needed. The department shall conduct a
26 comprehensive bond review for each bonded facility at least every 5 years.

27 (b) The department may conduct additional comprehensive bond reviews if, after amendment of
28 the certificate, an annual bond review, or an inspection of the facility, the department determines that an
29 increase in the bond level may be necessary. The department shall consult with the operator if a review
30 indicates that the bond level should be adjusted.

1 (c) If the department determines that the established bonding level of a facility does not represent
2 the costs of compliance with this chapter, the rules, and the certificate, the department shall modify the
3 bonding requirements of that certificate. The department shall notify the operator in writing of the
4 preliminary bond calculation within 30 days of completing a comprehensive bond review.

5 (d) Within 60 days of notification of the preliminary bond calculation, the department shall:

6 (i) issue a proposed bond determination;

7 (ii) notify the operator of that determination; and

8 (iii) provide reasonable statewide and local notice of that determination, including but not limited
9 to publishing a notice or article in newspapers of general daily circulation.

10 (e) After accepting comments on the proposed bond determination for 30 days after publication
11 of the notice, the department shall issue a final bond determination and provide public notice, as provided
12 in subsection (6)(d)(iii). The operator shall, within 30 days after notice of the final bond determination, post
13 bond in the amount determined by the department.

14 (f) (i) Except as provided in subsection (6)(f)(ii), the operator or any person with an interest that
15 may be adversely affected by the final bond determination may obtain a contested case hearing before the
16 board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, by
17 filing a written request for a hearing with the board within 30 days after notice of that determination.

18 (ii) An operator is not entitled to an administrative hearing or judicial review of the final bond
19 determination until the operator has posted bond in the amount determined by the department. The bond
20 must remain in place during the proceedings.

21 (7) A bond filed in accordance with the provisions of this chapter may not be released by the
22 department until the provisions of this chapter, the rules, and the certificate have been fulfilled. A bond
23 filed for a certificate obtained under this chapter may not be released or decreased until the public has
24 been provided an opportunity for a hearing and a hearing has been held if requested. The department shall
25 provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited
26 to publishing a notice or article in newspapers of general daily circulation.

27 (8) At the applicant's or operator's discretion, bonding in addition to that required by this section
28 may be posted. These unobligated bonds may, at the applicant's request, be applied to future bonds
29 required by this section.

30 (9) If the operator fails to fulfill any obligation of this chapter, the rules implementing this chapter,

1 or the certificate pertaining to reclamation, the department may declare the bond forfeit and the surety
2 shall, within 30 days after receipt of the notice of forfeiture by certified mail, pay to the department 10%
3 of the bond amount for use in interim reclamation activities until the bond can be fully liquidated.

4 (10) [All forfeited bond proceeds or proceeds of other financial assurance must be deposited in a
5 state special revenue fund for use in reclamation of facilities. The fund must be interest-bearing, and
6 interest must be retained in the fund.]

7
8 **NEW SECTION. Section 13. Codification instruction.** [Section 12] is intended to be codified as
9 an integral part of Title 75, chapter 20, part 4, and the provisions of Title 75, chapter 20, part 4, apply
10 to [section 12].

11
12 **NEW SECTION. Section 14. Coordination instruction.** If ___Bill No. ___ [LC 287] and [this act] are
13 both passed and approved, then bracketed language in [section 12(10) of this act] is void and must be
14 replaced by the phrase "All forfeited bond proceeds, or proceeds of other financial assurance, must be
15 deposited in the environmental response and rehabilitation account."

16
17 **NEW SECTION. Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21
22 **NEW SECTION. Section 16. Effective date.** [This act] is effective on passage and approval.

23 - END -